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ABSTRACT

The United States Supreme Court has to date decided four major cases dealing with curricula or the rights of students. The Court (1) declared unconstitutional a law that prohibited instruction in evolutionary theory, (2) upheld the right of students in school to express their views on controversial subjects, (3) extended protection under the free-speech clause to student editors of a university newspaper, and (4) held that a school board must go to trial to show that it had a valid purpose in withdrawing a number of books from its school libraries. Two decisions accommodated conscience-based objections by students: the Court held that a compulsory school attendance law should not apply to Amish children beyond the eighth grade and exempted children from flag salute requirements. Lower court decisions in 1982 upheld the prohibition of one school play, stated that another play was improperly prohibited, ruled against the banning of two books and one film, made two decisions against mandatory instruction of the creationist theory, and approved sex education courses in New Jersey. The educational implications of these decisions are noted. (MLF)

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34. Curriculum and The Constitution

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34. Curriculum and The Constitution

The Issue

When public educators expand the range of ideas available to students, they face a corresponding increase in complaints about the materials used for the program. Many of these complaints come from politically or religiously conservative individuals and organizations; but liberals complain too, often about stereotyping based upon race, sex, handicap, English-language ability, or other characteristics. Conversely, educators sometimes face pressure from parents to include materials of a religious nature in the curriculum. Finally, students introduce their own ideas in school, and in many ways these ideas become part of the total education environment. If public educators yield to pressure to restrict the full range of ideas available to students, they may face both an educational and constitutional dilemma. In particular, restriction of material may run afoul of the free speech clause of the first amendment, while inclusion of material to support religious views may violate the first amendment's prohibition against establishment of religion.

The Trends

The Association of American Publishers, the American Library Association, and the Association for Supervision and Curriculum Development have jointly reported an increase in complaints about texts and other books used in public

schools. About half of all formal complaints, they say, lead to some limitation of student access to material. Most complaints received by local officials focus on material about sex, sexuality, or contain objectionable language. Complaints received at the state level often center on the pervasiveness of "secular humanism" in school programs. Specific subjects include evolutionary theory, United States history, values clarification, and subjects that are seen as undermining traditional family values.

In a 1982 survey of 860 librarians, the National Council of Teachers of English (NCTE) and its Wisconsin chapter reported an increase in challenges to books in high school libraries over the past 16 years. Thirty-four percent of the survey respondents reported challenges, compared to 30% in 1977 and 20% in 1966. Seventeen percent of the respondents reported local censorship groups, up from 1% in 1977.

The librarians identified 48 "most frequently challenged" books, including such classics as Huckleberry Finn, The Catcher in the Rye, Of Mice and Men, Manchild in the Promised Land, A Farewell to Arms, and Brave New World. The most frequently challenged periodicals included the Christian Science Monitor, Ebony, Esquire, Ladies Home Journal, Ms. Magazine, The New Republic, Newsweek, Science Digest, Soviet Life, Sports Illustrated, and U.S. News and World Report.

States typically leave curricular decisions to local authorities, specifying only broadly the subjects to be taught. Almost half the states, (for example, California, Mississippi, Ohio, and Texas) have textbook selection committees to approve texts. Texas, which has permitted citizens to submit complaints about proposed selections, is shifting to a policy that allows them to also support proposed selections.

Finally, there has been a nationwide lobbying effort to persuade public educators to devote time to "scientific creationism" -- usually defined in more or less secular terms as a theory of instantaneous creation of humankind and the world. While it is difficult to assess either the extent to which students are speaking out in school or educators' responses, the number of student free-speech cases has declined over the past decade. This may be due to a decline in student activity, increased acceptance of student speech, or both.

Supreme Court Decisions

The United States Supreme Court has to date decided four major cases dealing with either public decisions affecting curricula or the rights of students to present individual

views while in school. (Five other decisions on prayer and Bible reading are discussed in ECS Issuegram No. 33.) Although the Court has not clearly articulated a general standard for curricular decisions, it appears to be using a purpose-oriented test. If school officials eliminate material simply because they disagree with the content, or if they include it to promote a religious view, the policy is unconstitutional. On the other hand, curricular decisions based on educational need are constitutional. Similarly, the first amendment prohibits the silencing of student views based on disagreement with those views. School officials must show that student expression would substantially disrupt the education program before they can constitutionally forbid it.

- In 1968, the United States Supreme Court held that states may not use the public school curriculum to promote a religious view, although states normally have full authority to set curriculum requirements. In Epperson v. Arkansas, the Court decided that the Arkansas legislature prohibited instruction in evolutionary theory to promote a particular religious view, and declared the law unconstitutional. The case has important implications for selecting or excluding curriculum materials.

- In 1969, the Court upheld the right of students in schools to express their views on controversial subjects, so long as they do so in the right place and manner. Specifically, the Court upheld the right of students to wear black armbands in protest of the Vietnam war, in Tinker v. Des Moines School District. Such displays are symbolic speech, protected by the free-speech clause of the first amendment. The Court observed that a student's right to free speech prevailed even where it provoked others. They said that school administrators should deal first with the disruptive students, rather than with those who appropriately express their views, and they should limit free expression only to prevent actual and substantial disruption of the school program. In Tinker, the Court envisioned the public high school as a place for free and open discussion of ideas among teachers and students.

- In 1973, the Court extended protection under the free-speech clause to student editors of a university newspaper. They had run a story using street language and a political cartoon with sexual overtones. The Court observed that the university's interest in "conventions of decency" was inadequate to override the important interests protected under the first amendment, in Papish v. Board of Curators.

- In July 1982, a four-member plurality of the Court held that a Long Island, N.Y. school board must go to trial to show that it had a valid purpose in withdrawing a number of books from its school libraries. Since the Supreme Court decision on this case (Board of Education, Island Trees Union Free District No. 26 v. Pico), the school district has restored the books -- some with a requirement for parental approval before a student can check them out -- thus averting a trial.

Lower Court Decisions in 1982

- On December 29, 1981, the United States Court of Appeals for the Third Circuit upheld the decision of a Delaware school board to prohibit staging of the play, Pippin, by a high school drama class. The court found no violation of the first amendment's guarantee of free exercise of religion. One month later, the Maryland State Board of Education ruled that a Maryland school district improperly prohibited production of the play, One Flew Over The Cuckoo's Nest, basing its decision on principles of sound education policy, not the Constitution.

- The United States Court of Appeals for the Eighth Circuit held that a Minnesota school board could not remove a particular film from its curriculum. The film, entitled "The Lottery," presented a story in which the citizens of a small town randomly selected one among themselves to be stoned to death each year. The Eighth Circuit held that the school board violated students' first amendment rights (which includes the right to have access to ideas of others) when they censored the film because of disagreement with its ideological and religious themes.

- Gordon Parks' book, The Learning Tree, remained on the shelves of the Mead School District near Spokane, Washington, despite protests from the Moral Majority. A federal district court judge dismissed the case without a trial on September 13, 1982 but reopened it shortly after.

- A federal district court in Maine has ordered the Baileyville School Committee to lift its ban against Richard J. Glasser's book about Vietnam, 365 Days. The board had banned the book for "obscene" language, but no board member had read it.

- A Colorado appellate court ruled that college officials could not censor a student newspaper without showing an overriding state interest.

- In McLean v. Arkansas Board of Education, a federal district court struck down the 1981 Arkansas equal time law. The law was almost a verbatim copy of the model bill distributed by Citizens for Fairness in Education, a group promoting "scientific creationism" nationwide. The drafters of this bill clearly sought to avoid the major pitfalls found in Epperson and to treat creationist theory as a religiously neutral subject. Nonetheless, the court found the intent of the law was to promote a religious view, and voided it.

- In December 1982, a federal district judge, citing a state constitutional provision lodging curriculum decisions with the state board of education, struck a similar scientific creationism law in Louisiana. The case is Auguillard v. Treen.

- Family life courses -- sex education -- have received judicial approval in New Jersey, in Smith v. Ricci. The New Jersey State Board of Education decided to require all school districts to have such programs with different content for different grade levels. Individual children could be excused where family raised objections based on "sincerely held moral or religious beliefs."

Excusal Policies
Accommodating Conscience-Based Objections

Where it would be unconstitutional to censor ideas presented in schools because of a disagreement with these ideas, to excuse children from participation is another matter. Constitutional principles require that a child be excused from school activities if his or her sincere and conscientious beliefs outweigh the state's interest in requiring the activity. As an outstanding example, in Wisconsin v. Yoder, the United States Supreme Court held that a compulsory school attendance law should not apply to Amish children beyond the 8th grade. The Court also has exempted children from flag salute requirements, reasoning that freedom of speech includes the right to remain silent, in West Virginia State Board of Education v. Barnette.

Questions

As education leaders develop or modify the public school curricula, they should consider:

- What inculcates creative, critical thought in children? What are the education implications of narrowing the range of materials available to children?

- To what extent should the age of the child affect decisions about content of curricula?

- Does exposure to literature containing racist, sexist, religious, or anti-religious concepts influence a child's views? If so, are there ways to present the material that help children adopt broader perspectives and critically evaluate such material?

- Which courses are so value-laden that an excusal becomes appropriate? Which courses are so value-laden that they should be elective?

- If, where excusal is appropriate, parents and child disagree over whether to exercise it, who should prevail?

- If public educators decide to eliminate material that is offensive to particular groups or individuals, what will the public school curriculum become?

What to Read

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